

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Clarence Gamble,

Plaintiff

v.

E.K. McDaniel, et al.,

Defendants

15-cv-00619-JAD-VCF

**Order Granting Application to proceed
in forma pauperis and Screening
Complaint**

[ECF Nos. 1, 30]

Nevada state-prison inmate Clarence Gamble brings this civil-rights complaint under 42 U.S.C. § 1983 and has also submitted an application to proceed *in forma pauperis*. Because Gamble's application and supporting financial documentation show that he is unable to pre-pay the filing fee, I grant him pauper status, screen his second-amended complaint,¹ permit his medical-needs claim to proceed, and order service on the defendants.

Discussion

A. Screening standard

The Prison Litigation Reform Act directs federal courts to conduct a preliminary screening of any case in which a prisoner seeks redress from a governmental entity or officer or an employee of a governmental entity.² In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous or malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from that relief.³ To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by a

¹ Good cause appearing, I grant Gamble's motion to amend complaint to add extra pages, ECF No. 30, and I screen his second-amended complaint in that document.

² See 28 U.S.C. § 1915(a).

³ See 28 U.S.C. § 1915A(b)(1)(2).

1 person acting under color of state law.⁴

2 Dismissal of a complaint for failure to state a claim upon which relief can be granted is
3 provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard
4 under § 1915 when reviewing the adequacy of a complaint. Pro se pleadings are liberally construed.⁵
5 And when a court dismisses a complaint under § 1915(e), the plaintiff should be given leave to
6 amend the complaint with directions for curing its deficiencies, unless it is clear from the face of the
7 complaint that the deficiencies could not be cured by amendment.⁶

8 **B. Screening Gamble's second-amended complaint**

9 Gamble sues multiple defendants for events that allegedly occurred while he was in custody
10 at the Southern Desert Correctional Center ("SDCC").⁷ Gamble sues defendants E.K. McDaniel;
11 Sheryl Foster; Brian Williams; Minor Adams; Frank Dreesen; Drs. Bannister, Aranas, Sanchez, and
12 Leaks; and nurses Guitierrez, Weiler, Tracy, and Stacey.⁸ He asserts four counts and seeks monetary
13 damages.⁹ After Gamble and defendants participated in an early mediation conference, the
14 magistrate judge granted Gamble leave to file an amended complaint.¹⁰

15 Gamble alleges that between March and May of 2012, he filed medical kites in which he
16 complained of extreme pain and lost vision in his left eye.¹¹ Gamble is 72 years old and suffers from
17 heart disease, hypertension, and mobility issues.¹² Gamble contacted Wardens Williams and Dreesen

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19 ⁴ See *West v. Atkins*, 487 U.S. 42, 48 (1988).

20 ⁵ *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

21 ⁶ See *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

22 ⁷ ECF No. 30 at 4.

23 ⁸ *Id.* at 5–8.

24 ⁹ *Id.* at 9–13, 16.

25 ¹⁰ ECF Nos. 22, 28.

26 ¹¹ *Id.* at 9.

27 ¹² *Id.*

1 about these medical problems but they refused to provide any assistance.¹³ According to Gamble,
2 Williams has a policy of ignoring grievances and this policy was enforced by Minor Adams and
3 Frank Dreesen.¹⁴

4 Gamble attempted to file grievances about his left-eye issues on March 26, October 18, and
5 November 18, 2012, but these grievances were rejected for reasons relating to his learning
6 disabilities. One nurse commented that treating Gamble would be a waste of resources due to his
7 advanced age.¹⁵ Gamble made repeated requests to nurses Stacey, Tracy, and Guitierrez for
8 treatment and their delayed responses resulted in permanent damage, including loss of vision.¹⁶ Dr.
9 Leaks commented that Gamble “still had one good eye.”¹⁷ Gamble alleges that, because his medical
10 grievances were rejected for “petty errors made on overly complicated paperwork,” he was robbed of
11 his vision and forced to endure months of pain.¹⁸

12 Gamble claims that between March and May of 2012, he submitted medical requests to the
13 infirmary at the Southern Desert Correctional Center concerning loss of vision, pain, and
14 headaches.¹⁹ He was not seen by medical until June of 2012 when he was seen by Dr. Sanchez, who
15 did not perform an examination and refused proper treatment or surgery until approval by the
16 Utilization Review Panel (“URP”),²⁰ which can take up to six months. Gamble alleges that this
17 delay for URP approval amounts to cruel and unusual punishment that has caused him extraordinary
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20 ¹³ *Id.*

21 ¹⁴ *Id.*

22 ¹⁵ *Id.*

23 ¹⁶ *Id.*

24 ¹⁷ *Id.*

25 ¹⁸ *Id.*

26 ¹⁹ *Id.* at 11.

27 ²⁰ *Id.*

1 pain and permanent blindness.²¹

2 Gamble also alleges that between March 2012 and September 2012, he filed numerous
3 complaints asking for treatment for his eye and for pain relief.²² He spoke personally with Drs.
4 Aranas, Sanchez, and Leaks and nurses Guitierrez, Weiler, Tracy, and Stacey, but these individuals
5 enforced and applied the URP policy, which resulted in unreasonable delay and permanent blindness
6 constituting deliberate indifference to his serious medical needs. Finally, Gamble alleges that after
7 my initial screening order in July 2016, he was separated from all of his legal work, leaving him
8 unable to comply with court-ordered deadlines.²³

9 Though Gamble asserts four claims, they boil down to two legal theories: deliberate
10 indifference to serious medical needs and denial of access to the courts. I address each in turn.

11 **C. Gamble’s deliberate-indifference claim may proceed against Drs. Leaks, Aranas, and**
12 **Sanchez; nurses Stacey, Tracy, Weiler, and Guitierrez; and Williams and Dreesen.**

13 A prison official violates the Eighth Amendment when he acts with “deliberate indifference”
14 to the serious medical needs of an inmate.²⁴ “To establish an Eighth Amendment violation, a
15 plaintiff must satisfy both an objective standard—that the deprivation was serious enough to
16 constitute cruel and unusual punishment—and a subjective standard—deliberate indifference.”²⁵
17 “Indifference may appear when prison officials deny, delay or intentionally interfere with medical
18 treatment, or it may be shown by the way in which prison physicians provide medical care.”²⁶ But,
19 when a prisoner alleges deliberate indifference based on a delay in treatment, he must show that the

22 ²¹ *Id.*

23 ²² *Id.* at 12.

24 ²³ *Id.* at 13.

25 ²⁴ *Farmer v. Brennan*, 511 U.S. 825, 828 (1994).

26 ²⁵ *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012).

27 ²⁶ *Id.* (internal citation omitted).

1 delay led to further injury.²⁷

2 Gamble states a colorable deliberate-indifference claim against defendants Drs. Leaks,
3 Aranas, and Sanchez and nurses Stacey, Tracy, Weiler, and Guitierrez. Gamble alleges that these
4 defendants denied him treatment despite his persistent complaints about his vision and pain
5 problems. As a result of this delay and denial of treatment, he permanently lost his vision. Gamble
6 also states a colorable deliberate-indifference claim against supervisory defendants Williams and
7 Dreesen because he alleges that he contacted both of these defendants to complain about his medical
8 problems and lack of treatment and they refused to assist him in obtaining treatment. Gamble's
9 deliberate-indifference claim fails against defendants McDaniel, Foster, Bannister, and Adams,
10 however, because he does not allege that these defendants participated in the alleged violation of
11 knew about it and failed to act to prevent it.

12 Accordingly, Gamble's deliberate-indifference claim may proceed against Drs. Leaks,
13 Aranas, and Sanchez; nurses Stacey, Tracy, Weiler, Guitierrez; and Williams and Dreesen. This
14 claim is dismissed with prejudice and without leave to amend against defendants McDaniel, Foster,
15 Bannister, and Adams.

16 **D. Gamble's access-to-the-courts claim is dismissed with prejudice and without leave to**
17 **amend.**

18 Prisoners have a constitutional right of access to the courts,²⁸ which prohibits, among other
19 things, prison officials from interfering with a prisoner's ability to actively litigate a filed case.²⁹ To
20 prevail on an access-to-the-courts claim, a prisoner must show that he has suffered "actual injury."³⁰
21 To establish actual injury, a prisoner must show that he has suffered actual prejudice as to
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23 ²⁷ See *Shapley v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985) (holding
24 that "mere delay of surgery, without more, is insufficient to state a claim of deliberate medical
25 indifference").

26 ²⁸ See *Bounds v. Smith*, 430 U.S. 817, 820 (1977).

27 ²⁹ See *Silva v. Di Vittorio*, 658 F.3d 1090, 1102–02 (9th Cir. 2011).

28 ³⁰ *Id.* at 1102.

1 contemplated or existing non-frivolous litigation, such as an inability to meet a filing deadline or
2 present a claim.³¹

3 Gamble fails to state a claim for denial of access to the courts because he does not allege that
4 he suffered an actual injury as a result of defendants' alleged interference. Gamble was granted an
5 extension to file his second-amended complaint,³² and I have considered all of his allegations fully in
6 this screening order. I therefore dismiss this claim with prejudice and without leave to amend
7 because amendment would be futile.

8 Conclusion

9 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Gamble's
10 application to proceed *in forma pauperis* [ECF No. 1] is **GRANTED**. Gamble is not required to pay
11 an initial installment of the filing fee, but **he remains responsible for paying the filing fee in full**
12 **once he has the funds available, regardless of whether this action is ultimately dismissed**. This
13 order does not extend to the issuance or service of subpoenas at government expense.

14 Under 28 U.S.C. § 1915(b)(2), the Nevada Department of Corrections must pay to the Clerk
15 of the United States District Court, District of Nevada, 20% of the preceding month's deposits to
16 Gamble's account (**Clarence Gamble, #1024656**), in the months that the account exceeds \$10.00,
17 until the full \$350.00 filing fee has been paid for this action. The Clerk of the Court is directed to
18 **SEND** a copy of this order to the Finance Division of the Clerk's Office. The Clerk of the Court is
19 also directed to **SEND** a copy of this order to the attention of the Chief of Inmate Services for the
20 Nevada Department of Corrections, P.O. Box 7011, Carson City, NV 89702.

21 IT IS FURTHER ORDERED that Gamble's motion to amend [ECF No. 30] is **GRANTED**.
22 The Clerk of Court is directed to detach and separately **FILE** pages 4–22 of ECF No. 30 as
23 Gamble's second-amended complaint.

24 IT IS FURTHER ORDERED that **Gamble's Eighth Amendment deliberate-indifference-**
25 **to-serious-medical-needs claim may proceed against defendants Drs. Leaks, Sanchez, and**

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27 ³¹ See *Lewis v. Casey*, 518 U.S. 343, 348 (1996).

28 ³² ECF No. 29.

1 **Aranas; nurses Stacey, Tracey, Weiler, and Guitierrez; and defendants Williams and Dreesen**
2 **only;**

3 **Gamble's access-to-the-courts claim is DISMISSED with prejudice because amendment**
4 **would be futile; and**

5 **All claims against defendants Bannister, McDaniel, Foster, and Adams are**
6 **DISMISSED with prejudice because amendment would be futile.**

7 The Clerk of the Court is directed to electronically **SERVE** a copy of this order and a copy of
8 Plaintiff's second amended complaint [ECF No. 30 at 4–22] on the Office of the Attorney General of
9 the State of Nevada, attention Kat Howe.

10 **The Attorney General's Office must file a notice** advising the Court and Gamble of: (a) the
11 names of the defendants for whom it accepts service; (b) the names of the defendants for whom it
12 does not accept service, and (c) the names of the defendants for whom it is filing the last-known-
13 address information under seal **by October 26, 2016**. As to any of the named defendants for whom
14 the Attorney General's Office cannot accept service, the Office must file *under seal* (and not serve
15 Gamble with) the last known addresses of those defendants for whom it has such information. If the
16 last known address of the defendant) is a post office box, the Attorney General's Office must attempt
17 to obtain and provide the last known physical addresses.

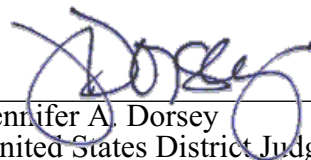
18 If service cannot be accepted for any of the named defendants, Gamble must file a motion
19 identifying the unserved defendants requesting issuance of a summons and specifying a full name
20 and address for the defendants. For the defendants whom the Attorney General has not provided
21 last-known-address information, Gamble must provide the full name and address for the defendants.

22 If the Attorney General accepts service of process for any named defendants, those
23 defendants must file and serve an answer or other response to the complaint by **December 6, 2016**.

24 From this point forward, Gamble must serve on defendants or, if an appearance has been
25 entered by counsel, upon their attorneys, a copy of every pleading, motion or other document
26 submitted for consideration by the Court. Gamble must include with the original document
27 submitted for filing a certificate stating the date that a true and correct copy of the document was
28 mailed or electronically filed to the defendants or counsel for the defendants. If counsel has entered

1 a notice of appearance, Gamble must direct service to the individual attorney named in the notice of
2 appearance, at the physical or electronic provided. The Court may disregard any document received
3 by a district judge or magistrate judge which has not been filed with the Clerk, and any document
4 received by a district judge, magistrate judge, or the Clerk which fails to include a certificate
5 showing proper service.

6 Dated this 6th day of October, 2016

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8 Jennifer A. Dorsey
9 United States District Judge
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